ARCO

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C. Floyd George, Jr.
Manager
Non-operating Assets

September 14, 1990

Mr. Brack W. Duker, Chairman
Columbia Falls Aluminum Company
One Wilshire Building, Ste. 1220
624 South Grand Avenue
Los Angeles, CA 90017

Re: **Letter of August 24, 1990**

Dear Brack:

I am writing on behalf of Atlantic Richfield ("ARCO") in response to your letter of August 24, 1990 which purports to give ARCO notice of certain "claims" asserted by Columbia Falls Aluminum Company ("CFAC") under Article X., Section 10(a) of the Acquisition Agreement of September 10, 1985. (Presumably, you have reference to clause (iii) of Section 10((a).) Claims has been placed in quotations because it is clear from a reading of the listed items that they do not meet the requirements for claims as to which ARCO would have any indemnification obligations under the provisions of the Acquisition Agreement.

To be a claim under the Agreement, it is necessary that by August 31, 1990 CFAC have sustained damages, losses or out-of-pocket expenses caused by or arising out an obligation or liability relating to the smelter business resulting from conditions existing as of the time of sale. Otherwise there is nothing to be claimed. If CFAC had incurred the requisite damages, I presume they would have been listed in your letter. At most, your letter provides, in its own words, a "list of identified environmental risks or hazards." Such a potential, contingent environmental risk or hazard, even if it were to occur in the future, is not a claim covered within the provisions of Section 10(a).

The indemnity sought by your letter is of an entirely different type than that contained in the Agreement. Essentially, CFAC is seeking indemnity for all liabilities which might at any time arise out of conditions existing at the site as of the date of sale. This would be a continuing obligation of much broader

scope than that bargained for by the parties. It would have required vastly different language in the indemnifying clause. Instead, what Montana Aluminum Investors Company received was a limited indemnity designed to protect it during the first five years of operations against losses and other expenses arising out of liabilities and obligations resulting from conditions existing as of the time of the sale. This is entirely consistent with the basic nature of the arrangement, whereby ARCO sold the Columbia Falls assets for one dollar. It was hoped at the time that the Columbia Falls operation could become profitable and could continue in business, a hope which has happily matured into a reality. It cannot be imagined that ARCO intended to give away a valuable asset and then agree to a continuing, open-ended obligation to keep the buyer whole from any subsequent liabilities or obligations which might be imposed upon it, even as the the buyer reaped all profits derived from the smelter's ongoing operations.

It is ARCO's position that it has fully discharged all of its obligations under the Acquisition Agreement, as amended from time to time by the parties. The items identified in your letter do not constitute claims within the meaning of the Agreement and are not properly chargeable to ARCO under the Agreement.* Likewise, ARCO cannot accept the vague reference with respect to matters which may have been discussed in "previous correspondence directed to you between the date of the acquisition of the property and this date" as stating any claim coming within the Agreement.

Very truly yours,

C. Floyd George, Jr.

cc: John R. Lucas, Jr.

* Item 4 is the subject of a separate agreement between the parties set forth in the letter agreement of November 16, 1988. ARCO, of course, will honor the terms of that agreement.